



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

POWER BUSINESS LINE

February 5, 2002

In reply refer to: PTS-5

Mr. Marshall Beil  
Ross & Hardies  
Park Avenue Tower  
65 East 55<sup>th</sup> Street  
New York, NY 10022-3219

Dear Mr. Beil:

On January 8, 2002, you submitted a Freedom of Information Act request, designated as our log #02-010, in which you requested "copies of any and all agreements in effect during any part of the time period between January 1, 1992 to date between the Bonneville Power Administration and any of the following:

- (1) ATOFINA Chemicals, Inc.;
- (2) Elf Atochem North America, Inc.; and
- (3) ATOFINA Portland."

In fulfillment of your request, enclosed are all agreements between BPA and any of the listed entities during that time period. The following documents are transmitted in their entirety. No material has been withheld:

Contract Number DE-MS79-81BP90244 Storage Agreement  
Contract Number DE-MS79-81BP90355 Power Sales Contract (1981 Contract)  
Contract Number DE-MS79-86BP92224 Site Specific Project Agreement  
Contract Number DE-MS79-92BP93472 DSI Non Firm Sales Agreement  
Contract Number DE-MS79-93BP94171 Joint Service Agreement  
Contract Number DE-MS79-93BP94190 Industrial Replacement Energy Interim Agreement  
Contract Number DE-MS79-94BP94446 Industrial Replacement Energy Interim Agreement  
Contract Number DE-MS79-95BP94770 General Transfer Agreement  
Contract Number 95MS-94741 Waiver and Release of Contract Claims A  
Contract Number 95MS-94856 Power Sales Agreement V  
Contract Number 95MS-99054 Surplus Firm Power Sale  
Contract Number 95MS-99097 Industrial Market Energy (IME) Agreement  
Contract Number 96MS-99169 Operating Agreement --  
Contract Number 97PB-10054 Joint Service Agreement  
Contract Number 00PB-12202 Block Power Sales Agreement

The following documents are being transmitted in redacted form, with the noted material withheld as described in the following paragraphs:

Contract Number 96MS-95113 Firm Energy Sale Agreement (**Power Amounts, Rates, Take or Pay Provisions, Use of Facilities Charges, Termination Provisions Redacted**)

Contract Number 01PB-23870 Confirmation Agreement (**Power Amount & Price Redacted**)

Contract Number 01PB-24059 Confirmation Agreement (**Price Redacted**)

Contract Number 01PB-10780 Curtailment Agreement (**Curtailment Charges Redacted**)

Power amounts and certain other provisions have been withheld from these contracts as Atofina considers this information to be business-sensitive. BPA has withheld this information pursuant to 5 U.S.C. § 552(b)(4) (Exemption 4 of the FOIA). This commercial information is confidential and Atofina has requested BPA to redact and withhold such information from public disclosure. Release of this information would provide Atofina's competitors with information that otherwise is not publicly available concerning Atofina's operating plans. This information is commercially sensitive and if released, could cause significant competitive harm to Atofina. In addition, this information has been traditionally protected from disclosure under the FOIA by BPA.

The confirmation agreements also have the power amounts and price information withheld because BPA considers this information to be business-sensitive. BPA considers certain data elements, namely price, quantity and the description of any options in current or recent historical BPA Trading Floor contracts to be exempt under Exemption 5. Such information can be used to ascertain BPA's historical or seasonal patterns for buying or selling energy, as those purchases and sales relate to the operation of the Federal Columbia River Power System. An example would be sales of energy by BPA prior to the initiation of higher river flow operations in support of migrating fish. While the timing of these "fish-flow" operations are generally known, BPA's purchase and sale practices leading into fish-flow operations are not public information. BPA has no discretion regarding the timing or amount of the fish flows. Generally, once these operations begin, energy prices fall dramatically as more energy is made available in the wholesale market. Allowing the market access to BPA pricing practices prior to the initiation of fish-flow will provide the market with a road map to BPA's fish-flow marketing strategies, and place BPA at a negotiating disadvantage. One consequence of this would be to reduce the value of BPA energy and negatively impact BPA's ability to optimize revenue from surplus power sales. Another example would be where BPA purchases energy in anticipation of a cold-snap to procure sufficient amounts of energy for regional transmission and power system reliability. Again, allowing the market to view BPA's cold-snap purchasing strategies through access to Trading Floor sales and purchase data would likely result in higher costs to BPA for such power, increasing BPA's power purchase costs and reducing BPA's net revenues.

DOE already has recognized that the prospect of "competitive harm," in the context of BPA's power sales and power purchase agreements, does not end once the contract has been awarded.

*(See Wenatchee World, 28 DOE ¶ 80,159 (2001) holding that release of contract pricing information would harm BPA's commercial interests by interfering with its ability to negotiate future contracts, and that power sale pricing information in executed contracts with BPA are properly exempt from disclosure under Exemption 5.)*

No other material is responsive to this request. If you are dissatisfied with this determination, you may appeal within thirty (30) days of receipt of this letter to Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585. Both the envelope and the letter must be clearly marked "Freedom of Information Act Appeal".

If you have any questions regarding this response, you may contact me at 503-230-4444.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gene Tollefson".

Gene Tollefson  
Freedom of Information Act Officer

Enclosures:  
Power Sales Contracts

cc: (w/o attachments)

J. Bennet -- LC-7

C. Jacobson. -- LC-7

K. Runzler -- LP-7

T. DeKlyen -- PL-6

S. Wilson -- PT-5

G. Insley -- PTS-5

H. Clark -- PTS-5

Official File -- PT (EX 13-13, 02-010)

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